

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

GALEN HOWELL (Deceased))	
Claimant)	
VS.)	
)	Docket No. 214,075
STATE OF KANSAS)	
Respondent)	
Self-Insured)	
)	

ORDER

Claimant appeals from the July 25, 2002 Award entered by Administrative Law Judge (ALJ) Bruce E. Moore. Oral arguments were presented to the Appeals Board (Board) on January 22, 2003.

APPEARANCES

Stanley R. Ausemus of Emporia, Kansas, appeared for the claimant. Richard A. Boeckman of Great Bend, Kansas, appeared for the respondent.

RECORD AND STIPULATION

The Board considered the record and adopts the stipulations that are listed in the Award.

ISSUES

The decedent took his life by suicide. Claimant, Beverly Howell, the decedent's surviving spouse, contends the suicide was due to decedent's depression which, in turn, was caused by work-related stress.

Judge Moore denied benefits finding that claimant failed to prove an accident and a physical injury. Claimant counters that the work-related stress and resulting depression caused physical changes to the decedent's brain.

Conversely, respondent contends that the ALJ's award should be affirmed in all respects.

Whether the decedent's suicide arose out of and in the course of his employment and whether he suffered an accident and injury as defined by the Workers Compensation Act are the issues for review.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

In the Award, Judge Moore found, inter alia, that:

Claimant has failed to sustain her burden of proof of personal injury, by accident, arising out of and in the course of his employment with Respondent. There is no evidence of a physical injury that led to or caused the depression that led to the suicide. . . . This Court is firmly bound by clear precedent that precludes the Award of workers compensation benefits in the absence of a precipitating physical injury. If there is to be an expansion of coverage under the Kansas Workers Compensation Act, it must come as a result of legislative action or appellate courts overruling precedent.¹

It is well established that a mental disorder or injury is not compensable under the Workers Compensation Act unless the mental problem stems from an actual physical injury.² Thus, before the decedent's death could be compensable, claimant must establish that the decedent's suicide resulted from depression and that his depression was directly traceable to a work-related physical injury. Stress alone does not satisfy the requirement of a physical injury.³

The Board agrees with the analysis of the evidence and law as set forth in the Award and adopts the ALJ's findings, conclusions and orders as its own.

¹ July 25, 2002 Award at 9-10.

² See, e.g., *Gleason v. Samaritan Home*, 260 Kan. 970, 926 P.2d 1349 (1996); *Followill v. Emerson Electric Co.*, 234 Kan. 791, 674 P.2d 1050 (1984).

³ See, *Boutwell v. Domino's Pizza*, 25 Kan. App. 2d 110, 959 P.2d 469 (1998); *Love v. McDonald's Restaurant*, 13 Kan. App. 2d 397, 771 P.2d 557, rev. denied 245 Kan. 784 (1984).

Award

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award entered by Administrative Law Judge Bruce E. Moore dated July 25, 2002 should be, and is hereby affirmed.

IT IS SO ORDERED.

Dated this _____ day of January 2003.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Stanley R. Ausemus, Attorney for Claimant
Richard A. Boeckman, Attorney for Respondent
Bruce E. Moore, Administrative Law Judge
Director, Workers Compensation Director